

Regular Session, 2013

HOUSE BILL NO. 568

BY REPRESENTATIVE GIROD JACKSON

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

TAX/SALES & USE: Creates the Louisiana Sales and Use Tax Commission

1 AN ACT

2 To enact R.S. 36:459(I) and Chapter 2-E of Subtitle II of Title 47, to be comprised of R.S.
3 47:401 and 402, relative to the Louisiana Sales and Use Tax Commission; to
4 establish the commission within the Department of Revenue; to establish the
5 purpose, powers, duties, operations, and authority of the commission; to provide for
6 the selection, terms and compensation of commission members; to provide for the
7 officers of the commission; to provide an electronic portal for the filing by remote
8 sellers of state and local sales and use tax returns; to establish a fiscal agent solely
9 for the purpose of remote seller remittances; to provide for the issuance of sales and
10 use tax regulations, private letter rulings, revenue rulings, and revenue information
11 bulletins with respect to remote sellers; to provide for the audit of remote sellers; to
12 provide for the receipt of remote seller protests; to provide for the granting and
13 conduct of administrative hearings requested by remote sellers and for related
14 matters; and to provide for related matters.

15 Be it enacted by the Legislature of Louisiana:

16 Section 1. R.S. 36:459(I) is hereby enacted to read as follows:

17 §459. Transfer of agencies or their powers to Department of Revenue

18 * * *

19 I. The Louisiana Sales and Use Tax Commission is placed within the
20 Department of Revenue and shall exercise and perform its powers, duties, functions,

1 and responsibilities as provided for agencies transferred in accordance with the
2 provisions of R.S. 36:801.1.

3 Section 2. Chapter 2-E of Subsection II of Title 47, comprised of R.S. 47:401 and
4 402 is hereby enacted to read as follows:

5 CHAPTER 2-E. LOUISIANA SALES AND USE TAX COMMISSION

6 §401. Louisiana Sales and Use Tax Commission

7 A. The Louisiana Sales and Use Tax Commission, hereinafter referred to as
8 "commission", is hereby created and established within the Department of Revenue
9 for the administration of the sales and use tax laws of the State of Louisiana and the
10 sales and use tax ordinances of local sales and use taxing jurisdictions with respect
11 to remote sales. The Commission shall:

12 (1) Promote, to the extent feasible and in accordance with law, uniformity
13 and simplicity in sales and use tax compliance in Louisiana, while reserving to
14 political subdivisions their authority to impose and collect sales and use taxes as
15 provided in Article VI, Section 29 of the Constitution of Louisiana and other laws.

16 (2) With respect to Senate Bill 336 and House Bill 684 of the 113th United
17 States Congress, the "Marketplace Fairness Act of 2013" or such similar federal law
18 as may be enacted by the United States Congress authorizing states to require remote
19 sellers, except those remote sellers who qualify for the small seller exceptions as
20 provided by federal law, to serve as the single entity in Louisiana to require remote
21 sellers and their designated agents to collect from customers and remit to the
22 commission sales and use taxes on remote sales sourced to Louisiana at the uniform
23 Louisiana state and local sales and use tax base established by Louisiana law;

24 (a) Provide the minimum tax administration, collection, and payment
25 requirements required by federal law with respect to the collection and remittance
26 of sales and use tax imposed on remote sales;

27 (b) Provide at no expense to remote sellers and their agents software
28 programs which may include, but not be limited to, Parish E-File or some other
29 electronic system or method to facilitate the filing, reporting, payment, and

1 remittance of state and local sales and use taxes to the appropriate local Louisiana
2 jurisdictions to which remote sales are sourced;

3 (3) Maintain a free Internet database that provides information for the use of
4 remote sellers regarding the taxability of products and services sourced to Louisiana,
5 along with any product and service exclusions and exemptions from sales and use
6 taxes, state and local jurisdiction tax rates, and territorial boundaries;

7 (4) Provide free of charge for remote sellers software that calculates the sales
8 and use tax due on each transaction at the time the transaction is completed, that files
9 sales and use tax returns, and that is updated to reflect changes in rates or bases;

10 (5) If necessary, establish a fiscal agent solely for the purpose of remote
11 seller remittances;

12 (6) Provide remote sellers and certified software providers with ninety days
13 notice of a rate change by the state or any local taxing jurisdiction in the state, and
14 relieve remote sellers and certified software sellers who collect taxes at the
15 immediately preceding effect rate during the ninety-day notice period if the required
16 notice is not provided from liability as a result thereof;

17 (7) Provide a procedure for persons to be approved as certified software
18 providers;

19 (8) Provide to remote sellers, and at no cost to them, a sales and use tax
20 remote sales tax return form for use in reporting and remitting state and local sales
21 taxes on remote sales sourced to Louisiana; and

22 (9) Provide an electronic means for remote sellers to determine the
23 appropriate local taxing authority to receive the tax on remote sales sourced to
24 Louisiana, the name and contact information of the single sales tax collector, and the
25 current rate of tax applicable to such sales.

26 B. As used in this Chapter, unless the context clearly indicates otherwise, the
27 following terms shall be defined as follows:

28 (1) "Commission" means the Louisiana Sales and Use Tax Commission.

29 (2) "Executive Director" means the executive director of the commission.

1 (3) "Local taxing authority" and "local" means those parishes, municipalities,
2 special tax districts, political subdivisions, parish governing bodies and school
3 boards who are authorized under the provisions of the Constitution of Louisiana, the
4 Louisiana Revised Statutes and jurisprudence to levy and collect local sales and use
5 taxes.

6 (4) "Sales and use taxes" and "taxes" shall mean the sales and use taxes
7 levied by the State of Louisiana under the provisions of Title 47 of the Revised
8 Statutes of Louisiana and the sales and use taxes levied by local taxing authorities
9 in Louisiana under the provisions of the Constitution of Louisiana, statutory laws
10 authorizing the imposition of such taxes, and local sales and use tax ordinances.

11 (5) "Federal law" shall mean Senate Bill 336 and House Bill 684 of the 113th
12 Congress, the "Marketplace Fairness Act of 2013" or such other similar federal law
13 as may be enacted by the United States Congress authorizing states to require remote
14 sellers, except those remote sellers who meet the small seller exceptions of federal
15 law, to collect and remit sales and use taxes on remote sales sourced to Louisiana.

16 (6) The terms "certified software provider", "remote sale", "remote seller"
17 and "sourced" shall have the meanings as defined by federal law.

18 (7) The term "person" shall have the meaning as defined by federal law for
19 purposes of remote sales but shall retain the meaning as provided in La.R.S.
20 47:301(8) for all other purposes in state and local sales and use tax law.

21 (8) The term "non-remote sale" means a sale that is not a remote sale.

22 (9) The term "non-remote seller" means a seller that is not a remote seller.

23 §402. Members of the Sales and Use Tax Commission

24 A. The duties of the commission shall be exercised and discharged under the
25 supervision and direction of a board of commissioners with voting power and a
26 non-voting executive director, all of whom shall be appointed and shall serve as
27 provided in this Section:

28 B.(1) The Commission shall be comprised of eleven voting commissioners,
29 eight of whom shall have knowledge and experience in sales and use tax

1 administration and enforcement and at least four of whom shall be active local sales
2 and use tax administrators. Two commissioners shall be appointed from
3 representative geographic regions of the state by each of the following organizations:
4 the Police Jury Association of Louisiana, the Louisiana School Boards Association,
5 the Louisiana Sheriffs Association, and the Louisiana Municipal Association. Three
6 additional voting commissioners with knowledge and experience in sales and use tax
7 administration and enforcement shall be appointed by the Louisiana Department of
8 Revenue. No person associated with any business group, and trade group, any public
9 policy group or any association other than the Police Jury Association of Louisiana,
10 the Louisiana School Boards Association, the Louisiana Municipal Association, the
11 Louisiana Sheriffs Association, the Louisiana Association of Tax Administrators or
12 the Louisiana Multiparish Tax Commission shall be appointed as a voting member
13 of the Commission. One commissioner shall be elected by the voting members of
14 the commission from those commissioners appointed by the Police Jury Association
15 of Louisiana, the Louisiana School Boards Association, the Louisiana Municipal
16 Association and the Louisiana Sheriffs Association to serve as chairperson.

17 (2) The commissioners shall determine the length of the terms of service of
18 commissioners, whose terms shall be staggered as the Commission may direct.
19 Commissioners shall serve without compensation but shall be reimbursed for
20 reasonable expenses, including travel expenses, incurred in the performance of
21 official duties.

22 C.(1) The Commission shall meet as often and at such locations as directed
23 by the chairperson. A majority of commissioners in attendance at commission
24 meetings, due and timely notice of which has been given by the chairperson, shall
25 constitute a quorum, and the majority vote of those present shall control all business
26 that comes before the commission.

27 (2) The domicile of the Commission shall be East Baton Rouge Parish,
28 Louisiana. The Commission, however, may meet and conduct Commission business

1 at other locations within the State of Louisiana as it may from time to time
2 determine, after timely notice to those persons who may be affected thereby.

3 D.(1) The Commission shall select and employ an executive director who
4 shall serve at the pleasure of the Commission. The executive director, under and
5 subject to the direct supervision and control of the Commission, shall direct the
6 day-to-day administration and enforcement of all laws, rules, policies, and
7 regulations which it is the duty of the Commission to administer and enforce. The
8 executive director shall receive such compensation and benefits as may be
9 determined and fixed by the Commission. The executive director shall also have the
10 power to employ such professional and administrative staff and at such rates of
11 compensation and with such benefits, plus necessary expenses incurred in
12 performing their duties, subject to approval by the Commission.

13 (2) The Commission and its operations shall be funded by the state, with
14 contributions from local taxing authorities based on a fair and rational basis to be
15 determined by the Commission.

16 E. The Commission shall develop rules and procedures in accordance with
17 the Administrative Procedure Act governing its internal operations and governing
18 dealer and taxpayer dealings with the Commission.

19 F. The Commission shall have the power, duty and authority:

20 (1) To serve as the single entity within the State of Louisiana responsible for
21 all state and local sales and use tax administration, return processing, and audits for
22 remote sales sourced to Louisiana;

23 (2) To provide a free Web-based portal as the single filing point for both
24 local and state sales and use tax returns for remote sales and to serve as the central,
25 single agency to which remote sellers shall make state and local sales and use tax
26 remittances;

27 (3) To assign and direct a single audit of remote sellers for the state and all
28 local taxing authorities;

1 (4) To serve as the single State of Louisiana agency to represent both state
2 and local taxing authorities in taking appropriate action to enable Louisiana to
3 participate in programs designed to allow Louisiana to receive additional state and
4 local sales and use taxes on sales made by remote sellers;

5 (5) To conduct administrative hearings as requested by aggrieved remote
6 sellers, administer oaths, make adjustments to assessments when justified by the
7 facts and the law, and render decisions following such hearings;

8 (6) To require remote sellers to register with the Commission; and,

9 (7) To provide, on or before June 1 for the preceding calendar year, to the
10 single tax collector for each parish an annual report of revenues collected and
11 distributed.

12 (8) Authorize the Commission to enter into agreements to waive or suspend
13 prescription as to local taxes;

14 (9) With the consent of the affected local taxing authority, issue notices of
15 intent to assess, notices of assessments, enforce collection of local taxes by distraint
16 and sale, institution of summary proceedings or ordinary proceedings for collection
17 of local taxes;

18 (10) To sue and be sued;

19 G. Nothing herein shall be construed to:

20 (1) Limit the right of local taxing authorities to levy and collect sales and use
21 taxes as provided in the Constitution of Louisiana, statutory law and jurisprudence;

22 (2) Authorize the Commission to exercise any right or perform any function
23 presently exercised by local sales and use tax authorities under present law;

24 (3) Create, repeal or amend any local tax exclusions or exemptions;

25 (4) Authorize the Commission to grant local tax amnesty;

26 (5) Authorize the Commission to promulgate rules, regulations, issue private
27 letter rulings or give to dealers or taxpayers other advice that is inconsistent with the
28 Louisiana Constitution, statutory law or controlling jurisprudence;

1 (6) Require local taxing authorities to make refunds, give tax credit, waive
2 penalties or waive audit costs;

3 (7) Repeal or amend any provisions of any local tax ordinances;

4 (8) Extend to any local taxes any state exclusions, exemptions, credits,
5 rebates or other tax relief provisions that do not presently apply to local taxes;

6 (9) Repeal or amend any provision of the Uniform Local Sales Tax Code,
7 La.R.S. 47:337.1, et seq.; or

8 (10) Make the State of Louisiana a member of the Streamlined Sales and Use
9 Tax Agreement;

10 (11) Authorize the Commission to serve as a central state collection agency
11 for local sales and use taxes; or

12 (12) Limit any statutory and ordinal provisions in place as of the effective
13 date of this Act that require dealers and taxpayers, with respect to non-remote sales,
14 to pay and remit directly to the single sales and use collector in each parish the sales
15 and use taxes due to each local taxing authority within each parish; or,

16 (13) Repeal or amend any provision of La. R.S. 47:1508 and 1508.1.

17 H. The Louisiana State Law Institute is hereby authorized and requested to
18 review all statutes which contain phrases being changed by this Act and in all
19 locations it deems appropriate change said references, particularly those that apply
20 to the levy and collection of state and local sales and use taxes.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

Girod Jackson

HB No. 568

Abstract: Establishes the Louisiana Sales and Use Tax Commission for purposes of administration and collection of state and local sales and use taxes on remote sellers.

Proposed law establishes the Louisiana Sales and Use Tax Commission within the Department of Revenue for the administration of the sales and use tax laws of the state of Louisiana with respect to remote sales.

Proposed law also provides for members of the commission and their duties.

(Adds R.S. 36:459(I) and R.S. 47:401 and 402)